taken on as many occasions (section 151) and it appears to us that when the falsification charged are confined to those items, the criminal breach of trust and the falsifications are so closely inter-related that the twenty-three falsifications become a single offence like the twenty-three breaches of trust which form a single offence and they are related to the criminal breach of trust items by community of purpose and they stand to one another in the relationship of cause and effect.

The falsification in respect of each of the twenty-three dollars was committed in the same transaction as the criminal breach of trust. The criminal breach of trust was one offence. The falsification was a composite offence, one may say a procedural offence to accomplish the criminal breach of trust—a kind of adjective offence, and just as the misappropriation of the twenty-three dollars over a period of just under a year was one offence, so the falsification by omitting to enter up these twenty-three dollars should be regarded as one offence.

Had the appellant been convicted on the second charge, he could only have received one sentence on that charge. He could no more have received twenty-three separate sentences than he could on the first charge.

Even if there had been no second charge, then, the receipt of the money having been proved, evidence of the falsifications could have been given, not to prove that the appellant was a bad character but as part of the *res gestae*.

The entries, or failure to make entries, in the books kept by the appellant are just as relevant to the charge of criminal breach of trust as is the finding of moulds and dies in the possession of a person charged with counterfeiting.

The appellant was in no way prejudiced by the second and third charges and in any case each of these charges was in reality a charge for a single offence each of which formed part of the same transaction with the single (though composite) offence of criminal breach of trust.

This ground of appeal therefore fails.

The appeal is dismissed.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]

POYSER, C.J., McELWAINE, C.J. (S.S.) &

CUSSEN, J.

December 12, 1939.

RE KARTHIGASU ARUMUGAM *EXPARTE* J. K. R. LEONARD.

[SELANGOR CIVIL APPEAL No. 3 of 1939]

Bankruptcy Enactment (Cap. 55) Ss. 28 (ii), 78 (iii), 85 (i)—Conditional discharge—application by Official Assignee for directions—competency of.

A bankrupt was granted a discharge subject to a judgment for a specified sum being entered against him and subject to the condition that his net income in excess of $306/- per month be paid to the Official Assignee until the judgment had been satisfied. During a period of twelve months the debtor, in each month that his income exceeded $306/- paid the excess to the Official Assignee and the Official Assignee, on account of months when his income did not reach $306, allowed various refunds to the debtor, totalling $950/-. The Official Assignee moved the Court under Section 78 (iii) of the Bankruptcy Enactment for directions in relation to the order of conditional discharge. Gordon-Smith, J., before whom the motion came on for hearing confirmed the Official Assignee's interpretation of the Order and his action thereon and varied the Order by the addition to it of words sanctioning the refund from time to time to the debtor of the excess paid to the Official Assignee to make up the net income of the debtor to a sum of $306/-. The appellant appealed against Gordon-Smith, J's. order on the grounds, amongst others, that the Official Assignee had no **locus standi** in the matter and that only the bankrupt could apply for a revision of the order for discharge.

Held, that the application was properly made by the Official Assignee under Section 78 (iii) of the Bankruptcy Enactment.

In re John Roberts & Co. (3) distinguished.

Held further, that the Court of a Judge has a very wide jurisdiction, under Section 85 (i) of the Bankruptcy Enactment, to rehear an application for discharge and vary an Order of discharge, although such order has become effective.

In re a Debtor, (1) applied.

Cases referred to:—

(1) *In re Debtor*, (1939) 1 Ch. 489.
(2) *Milson v. Carter*, (1893) A.C. 638.
(3) *In re John Roberts & Co.* (1904) 2 K.B. 299.
(4) *In re Tobias & Co.*, (1891) 1 K.B. 463.

Braddell (*Ramani* with him) for the Appellant.

This Appeal relates to an Order granting conditional discharge to a debtor under Sec. 28 of the Bankruptcy Enactment.

The order can be varied under the *Proviso* to Sec. 28 (ii).

But the law is clear:

(a) that application can only be made by the debtor, and

(b) that on such an application the Official Assignee has no *locus standi.*

I refer to *In re. John Roberts & Co.*[3].

The Order plainly means that where the debtor's income does not reach $306.00 he has nothing to pay. The Official Assignee had no authority to repay any part of the moneys received by him.

On the Judgment for $15,000.00 he was plain Mr. Blackwell and bare trustee of the creditors. The Debtor had ceased to be a bankrupt. The Order is plain English and nothing else can be read into it. It can be varied in certain circumstances. It cannot be interpreted. We also submit the Order for costs was wrong. The Appellant was entitled to put forward his objections and what he did was not being vexatious but only being unsuccessful.

Grattan-Bellew, for the Official Assignee:

The argument that the Official Assignee cannot be heard is unsustainable.

I refer to *In re a Debtor,* (1) at p. 495. Cussen J. had the Statutory report of the Official Assignee before him when he made the Order and he obviously dealt with the position on an annual basis.

I also submit Gordon-Smith J. had power and jurisdiction to make the Order under section 85 (i) of the Bankruptcy Enactment (Cap. 55)—*Williams* on Bankruptcy 15th Edition p. 442 or under the Slip Rule—*Milson v. Carter*[2] at p. 640, or under section 86 (iii) of the Bankruptcy Enactment.

Briggs, for the Debtor:

I adopt Mr. Grattan-Bellew's argument. The right interpretation is to refer to the income as an annual income. The true position was as if the Bankrupt had been advancing moneys to the Official Assignee until the end of each particular year. Such repayment as he received was only repayment of moneys advanced by him. This is not an application under Sec. 28 (ii) as in *In re John Roberts & Co.*[3]. This is a application under Sec. 85 (i) and the jurisdiction is unlimited. I refer to *In re Tobias & Co.*[4].

Rajendra, for a Creditor:

I do not support this Appeal. My client's attitude is that the debtor should be enabled to live so that he may pay something to his creditors.

Braddell, in reply:

The Appeal involves only two questions:

(a) Had Gordon-Smith J. jurisdiction to make the order he made, and

(b) If he had, was it rightly exercised.

The argument of my opponents misses the point that *In re Roberts & Co.* was decided under Sec. 104 of 1883 Act. That is word for word the same as Sec. 85 (i) of our Enactment. That explains the passage in *Hailsham* Vol. 2, p. 407 para. 551. The case of *In re a Debtor,*[1] is entirely different.

There the Application was made by the Trustee in Bankruptcy as he was there trying to get the debtor back into his jurisdiction. It is conceded that the Court has a wide jurisdiction under Sec. 85 (i).

But it is to be exercised only on a proper application which invokes that jurisdiction. The Official Assignee is a creature of Statute. No Order was made against him and he could never ask to modify it. As to Slip Rule I say the Judgment of the Court is not to be interpreted by reference to previous proceedings. It has to be construed by what it says. I again draw attention to the Order for costs.

Cur. Adv. Vult.

Poyser, C.J.—In this case the bankrupt was on the 25th day of January, 1938, granted a discharge subject to the following conditions:—

(i) a judgment being entered against him in favour of the Official Assignee for the sum of $15,000/-;

(ii) that his net income in excess of $306/- per month be paid to the Official Assignee until the said judgment had been satisfied.

In April of this year the Official Assignee moved the Court, under section 78 (iii) of the Bankruptcy Enactment, for directions in relation to the above order. The affidavit in support of the motion set out, *inter alia,* the following facts.

> "That the debtor receives a Government allowance of $56/- per month in lieu of pension.
>
> "That on his discharge being granted he obtained an appointment as member of the Rubber Assessment Committee for which he receives remuneration at the rate of $50/- a day for each day he is employed for some months he is on duty for several days—in others none.
>
> "During the twelve months (February 1938 to January 1939) the debtor, in each month that his income exceeded $306/-, paid the excess of his income to the Official Assignee, and the Official Assignee, on account of months when his income did not reach

$306/–, allowed various refunds to the debtor, totalling $950/–."

To put it briefly, the Official Assignee treated the order of discharge on the assumption that the net income of the debtor was to be assessed on an annual and not a monthly basis.

This Motion came before Gordon-Smith J. who confirmed the Official Assignee's interpretation of the original order and his action thereon, and to make the matter clear for the future, varied the original order by the addition of the following words:—

"Provided that if the net income of the debtor does not amount to the said sum of $306/– in any month or months during a calendar year the Official Assignee shall from time to time refund to the debtor such sum or sums out of the balance in his hands arising from the excess so paid to him as aforesaid as will be sufficient to make up such net income to the said sum of $306/– a month."

The appellant, who is one of the twenty-eight creditors, lodged the only objection to the Official Assignee's interpretation of this order, the other creditors supported the Official Assignee's action, and Mr. Rajendra who appeared on the appeal for the largest creditor supported the order on the grounds that such order was on the whole for the benefit of the creditors, and that the debtor in order to retain his appointment on the Rubber Assessment Committee should receive a sufficient income to maintain himself properly.

Mr. Braddell on behalf of the appellant argued that the order of Gordon-Smith J. was bad, that the Official Assignee had no *locus standi* in the matter, and that only the bankrupt could apply for a revision of the order of discharge. The authority he principally relied on was *In re John Roberts & Co.*[3]. In that case it was held that an application, under the *proviso* at the end of section 8 (2) of the Bankruptcy Act 1890 for the modification of terms for a conditional order of discharge, ought to be made by the bankrupt himself and not by the trustee in bankruptcy. A similar *proviso* occurs in section 28 (ii) of the Bankruptcy Enactment and is as follows:—

"Provided that if, at any time after the expiration of two years from the date of any conditional order made under this section, the bankrupt shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order the Court may modify the terms of the order or any subsequent order in such manner and upon such conditions as it may think fit."

That case, however, is not in my opinion an authority in regard to this Motion which is one under section 78 (iii) for directions, and the Court has a very wide discretion to vary any order made under its bankruptcy jurisdiction. Section 85 (i) of the Bankruptcy Enactment (section 108 (1) of the 1914 English Act) is as follows:—

"The Court may review, rescind, or vary any order made by it under its bankruptcy jurisdiction."

According to *Williams* on Bankruptcy, 15th edition, page 442, the powers of the Court under this sub-section are, in a proper case, "almost without limit". This appears to be so, for in the case of *In re a Debtor,*[1] the Court of Appeal held that there was jurisdiction under section 108 (1) of the Act to rehear an application for discharge and vary the order of discharge, although the order of discharge had previously become effective. There is, therefore, ample authority to justify the order of Gordon-Smith J. which was not so much the variation of an order of discharge as the interpretation of one. If it was a variation he was entitled to make it.

As regards the merits, the order is fair and reasonable. It would obviously be most unjust, when it is agreed that the debtor requires an income of $306/– *per mensem* to live on, not to average his income over an annual period. The original order was made in the form it was, probably because it is the custom in Malaya to fix all salaries on a monthly basis.

I would dismiss the appeal with costs.

McElwaine, C.J. (S.S.)—I concur.

Cussen, J.—I concur.

Appeal dismissed with costs.

[REVISIONAL CRIMINAL JURISDICTION]

HORNE, J.

February 6, 1940.

PUBLIC PROSECUTOR

v.

NG TAI AND ONG TENG OON.

[NEGRI SEMBILAN MISCELLANEOUS CRIMINAL APPLICATION No. 2 of 1940.]

Criminal Procedure Code (Cap. 6) s. 295 (i)—Order for police supervision after a sentence of fine.

The accused were charged before the Magistrate, Seremban on the 6th January, 1940, with theft of scrap iron an offence under section 379 of the Penal Code (Cap. 45) and were convicted and sentenced as follows:—

"Fine $10/– or 14 days R.I. and one year's police supervision."

Upon revision (on reference by the Public Prosecutor).